

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8273 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

DUNGARKA GRAM PANCHAYAT

Versus

KANTILAL DEV KARAN

Appearance:

MR MURALI N DEVNANI for Petitioner
RULE SERVED for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 03/04/2001

ORAL JUDGEMENT

#. The prayer of the petitioner Dungarka Gram Panchayat in this petition is for quashing and setting aside the impugned order passed in Recovery Application No.2048/1986 on 26-10-1999.

#. The respondent is served but, none has appeared on his behalf nor the respondent is present in person. As such, Shri MN Devnani, learned counsel for the petitioner has been heard. The impugned order has been examined.

#. After considering the submissions of Shri Devnani, learned counsel for the petitioner, the petition has to be allowed for two reasons. The first is that, the petitioner challenge the existence of relationship of employer and employee between the petitioner and the respondent. But, this question was not decided by the Labour Court. In the absence of adjudication of this question, it is contended that the Labour Court could not have rendered the order under sec.33-C(2) of the Industrial Disputes Act. After going through the award, I find that this question has not at all been answered by the Labour Court, hence the impugned order becomes illegal and is liable to be set aside. However, even if the order is set aside on this score, the matter requires remand to the Labour Court. Shri Devnani refers to a Division Bench pronouncement by this Court in STATE OF GUJARAT V. SENDHAJI S.THAKOR 1999(1) GLH 513, in which the Division Bench has taken a view though contrary to the specific provision of sec.33-C(2) and sec.33-C(4) that, unless there is an award no application under sec.33-C(2) can be entertained because, an application under this section is in the nature of execution application. I do not propose to refer the question to a Larger Bench, and since on the first point the impugned order deserves to be quashed and set aside, the petition succeeds and is hereby allowed. The impugned order is quashed. No order as to cost.

April 3, 2001. [D.C. Srivastava, J.]
/sakka